

Deficiency Progress Report – Update 4

Report Submitted: January 28, 2010

CUPA: Mendocino County Environmental Health

Evaluation Date: October 8 and 9, 2008

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Corrected Deficiencies: [1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [8](#), [9](#), [10](#), [11](#), [12](#), [13](#)

1. Deficiency: The CUPA did not correctly report inspection and enforcement information on its Annual Summary Reports for fiscal years (FYs) 04/05 through 06/07.

- In the Annual Inspection Summary Reports (Report 3s), the CUPA did not report the total number of routine inspections that return to compliance for all of the program elements.
- In the Annual Enforcement Summary Reports (Report 4s), the CUPA did not report the total number of informal and formal enforcement actions for all of the program elements.
- In Report 4, the CUPA did not report the total amount of penalties assessed and collected.

Preliminary Corrective Actions: By November 10, 2008, the CUPA will submit its FY 07/08 Annual Summary Reports to Cal/EPA that correctly reports:

- the total number of routine inspections that return to compliance for all of the program elements
- the total number of informal and formal enforcement actions for all of the program elements
- the total amount of penalties assessed and collected

CUPA's 1st Update (2-10-09): See report November 5, 2008, by email to Farida Rozy.

Cal/EPA's 1st Response: Cal/EPA considers this deficiency corrected.

2. **Deficiency:** The CUPA did not complete its FY 07/08 Annual Summary Reports by September 30 of this year.

Preliminary Corrective Actions: By November 10, 2008, the CUPA will submit its FY 07/08 Annual Summary Reports to Cal/EPA.

The CUPA will submit all subsequent Summary Reports to Cal/EPA by September 30 of each year.

CUPA's 1st Update (2-10-09): See under 1 above.

Cal/EPA's 1st Response: Cal/EPA considers this deficiency corrected.

3. **Deficiency:** The CUPA's annual facility permits do not contain issuance or expiration dates.

Preliminary Corrective Actions: By February 9, 2009, the CUPA will issue facility permits that contain issuance and expiration dates to all of its permitted facilities.

The CUPA will submit a sample copy to Cal/EPA by the correction due date.

CUPA's 1st Update (2-10-09): Each permit now has issue and expiration dates.

Cal/EPA's 1st Response: Along with the next progress report, please submit a sample copy of the CUPA's revised permit.

CUPA's 2nd Update (6-2-09): Each permit now has issue and expiration dates (copy enclosed).

Cal/EPA's 2nd Response: Cal/EPA considers this deficiency corrected.

4. **Deficiency:** The CUPA does not have the following Unified Program (UP) administrative procedures:

- Procedures for responding to requests for information from government agencies with a legal right to access the information, or from emergency responders, including methods to prevent the release of confidential and trade secret information.
- Procedures for forwarding the HMRRP information in accordance with Health and Safety Code sections 25503.5(d) and 25509.2(a)(3).

Preliminary Corrective Actions: By January 9, 2009, the CUPA will complete its administrative procedures.

The CUPA will submit a copy to Cal/EPA with its first progress report.

CUPA's 1st Update (2-10-09): Procedures addressing these issues have been written into the updated Mendocino County Inspection and Enforcement Plan (Introduction). A copy is attached to this report.

Cal/EPA's 1st Response: Cal/EPA considers this deficiency corrected.

5. **Deficiency:** The CUPA has not reviewed its Inspection and Enforcement (I and E) plan annually and updated it as needed. Many of the inspection and enforcement policies the CUPA currently implements are not reflected in the I and E plan. The CUPA should expand on the following I and E plan elements:

- Provisions for administering all program elements.
- Enforcement notification procedures that ensure appropriate confidentiality; and coordination and timely notification of appropriate prosecuting agency(ies).
- Identification of all available enforcement options (i.e. red tag, civil, notice and order to abate, AEO).
- Uniform and coordinated application of enforcement standards.
- Identification of penalties and enforcement actions that are consistent and predictable for similar violations and no less stringent than state statute and regulations.
- A graduated series of enforcement actions that may be taken by the UPAs, based on the severity of the violation. (i.e. informal or formal based on violation class)
- A description of how the CUPA minimizes or eliminates duplication, inconsistencies, and lack of coordination within the inspection and enforcement program.

Preliminary Corrective Actions: By January 9, 2009, the CUPA will review the I and E plan and update the elements listed in the deficiency.

The CUPA will submit a copy to Cal/EPA with its first progress report.

CUPA's 1st Update (2-10-09): The Mendocino County Inspection and Enforcement Plan has been updated and improved. The deficiencies are addressed in the updated I and E Plan and it is attached to this report.

Cal/EPA's 1st Response: Cal/EPA considers this deficiency corrected.

6. **Deficiency:** The file review indicated that the CUPA is allowing underground storage tank (UST) facilities to operate with expired operating permits.

Preliminary Corrective Actions: By November 10, 2008, the CUPA will ensure that all UST's are properly permitted to operate.

CUPA's 1st Update (2-10-09): Corrected November 2008, Schlafer's Chevron in Mendocino was permitted in November 2008 and will be promptly permitted in the future.

Cal/EPA's 1st Response: Cal/EPA and the SWRCB consider this deficiency corrected.

7. **Deficiency:** The CUPA is not requiring existing UST facility owner/operators to submit all of the information on the new forms, A, B, and D, and is not requiring the new forms to be completed for permit renewal. The new forms became effective January 2008 as part of the California Code of Regulations Title 27 and Title 23 revisions.

Preliminary Corrective Actions: By October 9, 2009, the CUPA will ensure that all UST facilities have submitted the new UST forms A, B, and D.

Prior to conducting the annual inspection, the CUPA shall review all paperwork submitted for a Permit to Operate and ensure that the tank and piping systems, and the monitoring methods used are sufficiently described and are appropriate for the system. If the forms are incorrect the CUPA shall either correct the current forms, or have the facility owner resubmit new forms that are correct.

CUPA's 1st Update (2-10-09): MCEH is gathering the latest forms and studying the feasibility of folding in reporting on UST A, B, and D forms with the move to electronic reporting.

Cal/EPA's 1st Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The CUPA is making good progress towards correcting this deficiency. On the next progress report, please provide to the SWRCB, the number of facilities that have submitted the new UST forms A, B, and D.

CUPA's 2nd Update (6-2-09): Initiated: To meet October 9, 2009, deadline MCEH will mail out UST A, B, and D forms to all facility operators requesting information be provided (letter enclosed with this report). Request for information will also be made during routine inspections.

Cal/EPA's 2nd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** Please submit to Cal/EPA, copies of the completed and approved UST forms A, B, and D for two facilities. In addition, update

Cal/EPA on the number of facilities that have submitted their UST forms since the request letters were sent out. The SWRCB would also like to point out that the statement on the request letters, "Regional Water Quality Control Board" should be changed to "State Water Resources Control Board".

CUPA's 3rd Update (8-26-09): The CUPA mailed copies of UST forms A, B, and D from 2 UST facilities to Cal/EPA for review. 21 UST facilities have submitted the forms.

Cal/EPA's 3rd Response: The UST forms submitted are incomplete and/or the information reported is not consistent among the three forms for a facility. The CUPA must confirm the information reported on all three UST forms submitted before approving them. Does the CUPA verify that forms submitted are in compliance as they are received or is the review process only tied to facilities annual inspections? Please submit to Cal/EPA, copies of completed and approved UST forms A, B, and D for two facilities. Please refer to the SWRCB's response.

- **SWRCB's Response:**

Quest Mart

All documents are missing facility ID numbers (agency use only- to be filled out by the local agency)

Form A

- a. Indicates there is one tank; and
- b. Tank operator information incomplete.

Form B

- a. Indicates there are three tanks (three Form B's submitted- two for regular unleaded and one for premium);
- b. All three forms incomplete- missing type of action.
 - 1. Premium Tank Form B:
 - A. Missing date UST installed and its capacity.

Form D

- a. Section for SW tanks semi-filled out (Form B's indicate DW tanks); and
- b. Section V.
 - 1. Incomplete;

2. # 2 & 3- MLLD vs. ELLD- no indication what the facility is using because these section are left blank;
3. Pipe integrity testing- not sure if needed because previous sections left blank. This section blank as well;
4. Missing CUPA's approval (on page 4 of document, which is missing).

Little River Market

Form A

- a. Missing Facility ID;
- b. Section V:
 1. BOE number missing (permit application cannot be processed if this missing.)

Form B

- a. Received two Form B's (Form A indicated there are three UST's on site).
 1. Missing facility ID; and
 2. Both forms indicate premium fuel (is this correct?).

Form D

- a. Missing CUPA's approval (page 4);
- b. Missing facility ID;
- c. Form D indicates DW tanks while Form B indicates SW tanks;
- d. Section IV number two not completely filled out; and
- e. Section VI number one not completely filled out.

Jacks Muffler Shop

Form A

- a. None (not sure on the number of tanks onsite).

Form B

- a. Received two Form B's;
- b. Missing facility ID numbers; and
- c. Section V not completely filled out.

Form D

- a. None

CUPA's 4th Update (1-28-10): To date, the CUPA has received forms A, B, & D from 35 UST facilities. Due to the volume of forms received and limited staff time, the CUPA did not review forms for completeness upon receipt; staff have been directed (and will be reminded often) to ensure that the forms are received and reviewed for completeness during each facility's annual inspection. The 3

samples shown above are in the process of being updated to be deemed complete. The 2 copies of completed forms requested are in our outgoing mailbox now, but since our building is closed Fridays it likely won't be mailed until Monday, Feb. 1, 2010.

Cal/EPA's 4th Response: There are still some problems with the UST forms. Refer to the SWRCB's response for details. Also, when the CUPA staff meet to discuss the administration of the forms, it may be a good idea to have Sean with the SWRCB conference in. His direct participation in the meeting could be invaluable for CUPA staff to better understand UST forms compliance. This deficiency will be carried over to the 2010 Evaluation cycle.

- **SWRCB's Response:** The UST forms submitted are incomplete and/or the information reported is not consistent with UST regulations. According to your letter, you plan on having a meeting to discuss forms A, B, and D. If you like, the SWRCB is available to help with instructions on ensuring the completeness and accuracy of these forms. The SWRCB is also sending to you, two documents to help out with understanding UST monitoring requirements. Please see below for additional notes:

Quest Mart

Form A- OK.

Form B

1. All form B's indicate that the overfill prevention is audible & visual alarms and for fill components installed are spill buckets and striker plates. UST regulations state that if using only audible and visual alarm for overfill (no ball float or flapper valve), secondary containment is required for vent /tank riser piping, which is not indicated on the form.

Form D

1. # 2 & 3- MLLD vs. ELLD- no indication what the facility is using because these section are left blank;
2. Form D now indicates that this facility is required to perform pipe integrity testing. Why? This question is asked because Form D indicates that all alarms trigger shutdown in both the turbine sump and UDC. UST regulations state that in lieu of the 0.1 gph annual piping test, a continuous monitoring system that shuts down the pump or stops the flow of product at the dispenser when a leak is detected in the UDC AND continuous monitoring system for all product piping located outside the UDC is fail safe and shuts down the pump when a leak is detected.

NOTE: I will send to you a cheat sheet we have developed for UST containment and monitoring requirements. I will also send to you a copy of LG 150-2 UST overfill prevention systems.

USA/Tesoro # 68228

Form A

1. Missing Facility ID, otherwise, OK.

Form B

1. Missing facility ID
2. Form B indicates that there is no piping/turbine containment and there is no indication of corrosion protection (left blank).

Form D

1. Missing facility ID;
2. Possible missing item under record keeping for corrosion protection. May or may not be needed.

Jacks Muffler Shop

Form A- OK

Form B

1. Date UST's installed either blank or the words unknown are written in.
2. Piping containment section for tank 087-01 is blank.
3. Product pipe indicates DW, vent pipe indicates DW, and VR pipe indicates SW. Is this correct?

Form D- OK

- 8. Deficiency:** Out of eight files reviewed, none of the inventories included a Business Activities Page. The permit has the same information on its cover sheet, but the Business Activities Page is part of the inventory, not the permit.

Preliminary Corrective Actions: The Business Activities Page is included in the packet handed out to businesses. Starting immediately, the CUPA must have the handlers fill out the page and include it in the business plan. By obtaining the form at the time of inspection, all active businesses should have this form filled out by October 9, 2009.

CUPA's 1st Update (2-10-09): Business Plan inspectors are adding business activity pages to each file that does not have one. Completion date will be November 2009.

Cal/EPA's 1st Response: Cal/EPA and the CalEMA consider this deficiency corrected.

- 9. Deficiency:** Out of eight files reviewed, six lacked the mandated spill notifications in the emergency response plan (ERP). The two ERPs that did have the required notifications had an outdated 916 number for the State Warning Center. The obsolete number is 916-262-1621. This has been changed to 916-845-8911. The 800 number is still valid.

Preliminary Corrective Actions: The current version of the boilerplate ERP form used by the CUPA has the correct information. Starting immediately, the CUPA must insure that the business' emergency response plan has spill notification information. If this is done at the time of inspection, all active businesses should have the correct information in their business plan by October 9, 2009.

CUPA's 1st Update (2-10-09): Business Plan inspectors are having the facilities correct the Warning Center numbers for the files and in their ERPs at the facilities.

Cal/EPA's 1st Response: Cal/EPA and the CalEMA consider this deficiency corrected.

- 10. Deficiency:** While it is noteworthy that the CUPA inspects all business plan facilities annually, and that the inspector verifies the inventory and the validity of the other elements of the business plan, it is the responsibility of the business to certify annually that there has been no change in the inventory, and triennially, that the entire business plan has been reviewed. None of the eight files reviewed had annual inventory certifications or 3-year certifications of review by the business.

Preliminary Corrective Actions: By January 9, 2009, the CUPA will submit a plan to obtain annual inventory and three year business plan review certifications. Designing a form consistent with the requirements of HSC 25501 (f), 25505 (c) and (d), and CCR, Title19, Section 2729.5(a)(2), and requesting the operator to sign it at the time of inspection will suffice. By October 9, 2009, all active businesses should be up to date.

CUPA's 1st Update (2-10-09): MCEH has developed and is using a form for facilities to properly certify and sign for the annual and tri-annual certifications. Each inspector reviews the status and obtains the appropriate certification at the time of the annual inspection.

Cal/EPA's 1st Response: Cal/EPA and the CalEMA consider this deficiency corrected.

11. Deficiency: One business (H&W Vineyards) whose file was reviewed was apparently a new business as of November 29, 2007. The business plan was lacking the Business Activities Form, the site map, the entire emergency response plan and the training plan.

Preliminary Corrective Actions: Beginning immediately, whenever an incomplete business plan is received, the CUPA must notify the business of the deficiency and give them 30 days to submit the missing elements, per HSC 25505(a)(2).

CUPA's 1st Update (2-10-09): Each inspector is carefully reviewing each file for completeness. The program manager has established a policy requiring follow-up inspections shortly after the 30 day deadline. The manager reviews the open violations each month.

Cal/EPA's 1st Response: Cal/EPA and the CalEMA consider this deficiency corrected.

12. Deficiency: The area plan did not contain a form providing information on the elements within the area plan.

Preliminary Corrective Actions: By January 9, 2009, the CUPA must complete a reporting form substantially equivalent to the model form shown in CCR, Title 19, Section 2720, and append the form to the area plan.

CUPA's 1st Update (2-10-09): This form has been added to the MC Area Plan binder, and to the electronic copy of the Plan.

Cal/EPA's 1st Response: Cal/EPA and the CalEMA consider this deficiency corrected.

13. Deficiency: The CUPA failed to exercise a graduated series of enforcement for the following Class 1 violation:

- The failure to provide secondary containment certified by a professional engineer for a waste oil tank, which was observed during the January 09, 2008 inspection conducted at Kelly Automotive located at 65100 Drive Thru Tree Road in Leggett, CA.

Preliminary Corrective Actions: In the future, the CUPA will exercise a graduated series of enforcement on facilities that have chronic and/or severe violations.

The CUPA will refresh staff knowledge of the definitions of Class I, Class II and minor violations. A good tool for refresher training may include covering the Cal/EPA "Violation Classification Guidance Document for Unified Program

Agencies,” which is available on the Cal/EPA website under Unified Program-Publications and Forms.

By January 09, 2009, the CUPA will provide violation determination training to its inspectors.

CUPA’s 1st Update (2-10-09): CUPA staff has been trained on the definitions of Class I, Class II and minor violations. This subject was also discussed at the November and December, 2008, Hazmat meetings.

The document referred to, “Violation Classification ...” has been downloaded and is being used in the trainings.

The training process is an on-going one with the goal to have inspectors fully conversant and using the classifications by May 2009.

Management continues to meet with County Counsel regarding enforcement and, specifically, AEO, County Nuisance Abatement procedures, and other legal tools to gain timely compliance.

Cal/EPA’s 1st Response: Cal/EPA and the DTSC consider this deficiency corrected. Please refer to DTSC’s response.

- **DTSC’s Response:** DTSC accepts and appreciates the CUPA's efforts in training its inspectors in the appropriate application of formal enforcement. Thank you.